



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648- XA923]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys off of New York and New Jersey

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments on proposed renewal incidental harassment authorization.

SUMMARY: NMFS received a request from Atlantic Shores Offshore Wind, LLC (Atlantic Shores), for the renewal of their currently active 2020 incidental harassment authorization (IHA) to take marine mammals incidental to marine site characterization surveys off the coasts of New York and New Jersey in the area of the Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS-A 0499) and along potential submarine cable routes to a landfall location in New York or New Jersey. These activities for which Atlantic Shores has requested a renewal IHA are identical to those covered in the initial IHA, which is currently active and expires on April 19, 2020. Pursuant to the Marine Mammal Protection Act (MMPA), prior to issuing the initial IHA in 2020, NMFS requested comments on both the proposed IHA and the potential for renewing the initial authorization if certain requirements were satisfied. The renewal requirements have been satisfied, and NMFS is now providing an additional 15-day comment period to allow for any additional comments on the proposed renewal not previously provided during the initial 30-day comment period. If issued, the renewal IHA would be effective April 20, 2021 through April 19, 2022.

DATES: Comments and information must be received no later than **[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Written comments should be submitted via email to *ITP.Daly@noaa.gov*.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period.

Comments, including all attachments, must not exceed a 25-megabyte file size.

Attachments to comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act> without change. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Jaclyn Daly, Office of Protected Resources, NMFS, (301) 427-8401. Electronic copies of the original application, renewal request, and supporting documents (including **Federal Register** notices of the initial proposed and final authorizations and issued IHA), as well as a list of the references cited in this document, may be obtained online at:

<https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least practicable adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to here as “mitigation measures”). Monitoring and reporting of such takings are also required. The meaning of key terms such as “take,” “harassment,” and “negligible impact” can be found in section 3 of the MMPA (16 U.S.C. 1362) and the agency’s regulations at 50 CFR 216.103.

NMFS’ regulations implementing the MMPA at 50 CFR 216.107(e) indicate that IHAs may be renewed for additional periods of time not to exceed 1 year for each reauthorization. In the notice of proposed IHA for the initial authorization, NMFS described the circumstances under which we would consider issuing a renewal for this activity, and requested public comment on a potential renewal under those circumstances. Specifically, on a case-by-case basis, NMFS may issue a one-time 1 year renewal IHA following notice to the public providing an additional 15 days for public comments when

(1) up to another year of identical or nearly identical, activities as described in the **Description of the Specified Activities and Anticipated Impacts** section is planned or (2) the activities as described in the **Description of the Specified Activities and Anticipated Impacts** section would not be completed by the time the IHA expires and a renewal would allow for completion of the activities beyond that described in the Dates and Duration section of the initial IHA **Federal Register** notice (85 FR 21198, April 10, 2020), provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA).

- The request for renewal must include the following:

- (1) An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.*, reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

- (2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

An additional public comment period of 15 days (for a total of 45 days), with direct notice by email, phone, or postal service to commenters on the initial IHA, is provided to allow for any additional comments on the proposed renewal. A description of

the renewal process may be found on our website at:

www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals. Any comments received on the potential renewal, along with relevant comments on the initial IHA, have been considered in the development of this proposed IHA renewal, and a summary of agency responses to applicable comments is included in this notice. NMFS will consider any additional public comments prior to making any final decision on the issuance of the requested renewal, and agency responses will be summarized in the final notice of our decision.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must evaluate our proposed action (*i.e.*, issuance of incidental harassment authorization) and alternatives with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 of the Companion Manual for NAO 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the proposed action qualifies to be categorically excluded from further NEPA review.

Information in Atlantic Shores' application and this notice collectively provide the environmental information related to proposed issuance of these regulations and subsequent incidental take authorization for public review and comment. We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the request for incidental take authorization.

History of Request

On April 10, 2020, NMFS issued an IHA to Atlantic Shores to take marine mammals incidental to marine site characterization surveys off the coast of New York and New Jersey (85 FR 21198), effective from April 20, 2020 through April 19, 2021. On February 3, 2021, NMFS received a request from Atlantic Shores for the renewal of that initial IHA so that Atlantic Shores can continue its survey activities beyond April 19, 2021. As described in the request for the renewal IHA, the activities for which incidental take is requested are identical to those covered in the initial authorization. As required, the applicant also provided a preliminary monitoring report (available at <https://www.fisheries.noaa.gov/action/incidental-take-authorization-atlantic-shores-offshore-wind-llc-marine-site-characterization>) which confirms that the applicant has implemented the required mitigation and monitoring, and which also shows that no impacts of a scale or nature not previously analyzed or authorized have occurred as a result of the activities conducted.

Description of the Specified Activities and Anticipated Impacts

Atlantic Shores proposes to conduct a second year of marine site characterization surveys, consisting of high-resolution geophysical (HRG) and geotechnical surveys, within the 183,353-acre Lease Area, located approximately 18 nautical miles southeast of Atlantic City, New Jersey, and proposed Export Cable Route (ECRs) corridors from the Lease Area to shore landing locations along the coast of New Jersey and New York. The purpose of the HRG and geotechnical surveys is to support site characterization, siting, and engineering design of offshore Project facilities including wind turbine generators (WTGs), offshore substation(s), and submarine cables within the Lease Area and proposed ECR Areas. Atlantic Shores requested renewal of the initial IHA that was issued by NMFS in April 2020 on the basis that (1) up to another year of identical or nearly identical, activities as described in the Specified Activities section of the initial IHA is planned and, (2) the activities as described in the Specified Activities section of

the initial IHA would not be completed by the time the IHA expires and a renewal would allow for completion of the activities beyond that described in the Dates and Duration section of the initial IHA.

In their 2020 IHA application, Atlantic Shores estimated it would conduct surveys for 350 days at a rate of 85 kilometers (km) per day for a total of 29,750 km. However, in 2020, Atlantic Shores completed only 16,893 km of geophysical surveys; therefore, approximately 12,857 km remain to be surveyed. Atlantic Shores also recognized they were able to survey approximately 55 km per day versus the predicted rate of 85 km per day considered in the initial IHA. Therefore, Atlantic Shores predicts the 12,857 km of survey planned in 2021 under the renewal IHA will occur over 234 days (12,857 km/55 km per day). The renewal IHA would authorize harassment to marine mammals for this remaining survey distance using survey methods identical to those described in the initial IHA application, hence the anticipated effects on marine mammals remain the same as well. All active acoustic sources and mitigation and monitoring measures would remain as described in the initial IHA. The amount of take requested for the renewal IHA reflects the amount of remaining work in consideration of marine mammal monitoring data from the 2020 survey season resulting in equal or less take than that authorized in the initial IHA.

Detailed Description of the Activity

A detailed description of the survey activities for which take is proposed here may be found in the **Federal Register** notices of the proposed IHA (85 FR 7926, February 12, 2020) and issued IHA (85 FR 21198, April 10, 2020) for the initial authorization. As described above, Atlantic Shores is not able to complete the survey activities analyzed in the initial IHA by the date the IHA is set to expire (April 19, 2021). As such, the surveys Atlantic Shores proposes to conduct under this renewal would be a continuation of the surveys as described in the initial IHA. The location and nature of the activities, including

the types of equipment planned for use, are identical to those described in the previous notices. Because part of the work has already been completed, the duration of the surveys conducted under the renewal IHA will occur over less time than that described for the initial IHA (234 days versus 350 days); however, Atlantic Shores will continue to operate 24 hours per day to complete the work. Atlantic Shores proposes to continue its activities on April 20, 2021, after the initial IHA expires on April 19. The proposed renewal would be effective for a period of one year from the date of issuance.

Description of Marine Mammals

A description of the marine mammals in the area of the activities for which authorization of take is proposed here, including information on abundance, status, distribution, and hearing, may be found in the **Federal Register** notice of the proposed IHA for the initial authorization (85 FR 7926, February 12, 2020). NMFS has reviewed the monitoring data from the initial IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that neither this nor any other new information affects which species or stocks have the potential to be affected or the pertinent information in the Description of the Marine Mammals in the Area of Specified Activities contained in the supporting documents for the initial IHA.

Potential Effects on Marine Mammals and their Habitat

A description of the potential effects of the specified activity on marine mammals and their habitat for the activities for which take is proposed here may be found in the **Federal Register** notice of the proposed IHA for the initial authorization (85 FR 7926, February 12, 2020). NMFS has reviewed the monitoring data from the initial IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that neither this nor any other new information affects our initial analysis of impacts on marine mammals and their habitat.

Estimated Take

A detailed description of the methods used to estimate take for the specified activity are found in the **Federal Register** notices of the proposed and final IHA for the initial authorization. The acoustic source types, as well as source levels and marine mammal density and occurrence data applicable to this authorization remain unchanged from the initial IHA. Similarly, the stocks taken, methods of take, and type of take (*i.e.*, Level B harassment only) remain unchanged from the initial IHA.

In the initial IHA application submitted in 2019 for the 2020 HRG survey activities, Atlantic Shores used the following parameters to estimate the potential for take: (1) maximum number of days of survey that could occur over a 12-month period in each of the identified survey areas; (2) maximum distance each vessel could travel per 24-hour period in each of the identified survey areas; (3) maximum ensonified area (zone of influence (ZOI)); and (4) maximum marine mammal densities for any given season that a survey could occur. The calculated radial distances to the Level B harassment threshold (160 decibel (dB) root mean square (rms)) from a survey vessel are included in Table 1.

Table 1. Modeled Radial Distances from HRG Survey Equipment to Isopleths Corresponding to Level A Harassment and Level B Harassment Thresholds

Sound Source	Distance to Level B Harassment Threshold (m)
Kongsberg EA 400	172
Teledyne ODOM Echotrac CVM	173
Applied Acoustics Dura-Spark 240	372
Edgetech 2000-DSS	4
Edgetech 216	5
Edgetech 424	6
Edgetech 512i	7
Teledyne Benthos Chirp III	71
Kongsberg GeoPulse	231
Innomar SES-2000 Medium-100 Parametric	116
Applied Acoustics S-Boom Triple Plate	97
Applied Acoustics S-Boom	56

The equation for estimating take for all species remains the same as the initial IHA:

$$\text{Estimated Take} = D \times \text{ZOI} \times \# \text{ of days}$$

Where: D = species density (per km²) and ZOI = maximum daily ensonified area

In the original 2019 IHA application, Atlantic Shores calculated a conservative ZOI by applying the maximum radial distance for any category and type of HRG survey equipment considered in its assessment to the mobile source ZOI calculation. This maximum calculated distance to the Level B harassment threshold for the sparker of 372 m was also used to calculate the ZOI for the requested extension. The resulting ZOI is 41.36 square kilometers (km²).

This methodology of calculating take in the initial IHA applies to the proposed renewal IHA for all species, with the only difference being the fewer amount of days (*i.e.*, 234 versus 350). The result is that the amount of take is reduced proportionally to the reduction in the number of days of work remaining. As was done in the initial IHA, in some cases, Atlantic Shores has requested a deviation from the calculated take for some species given it does not account for group size. In other cases, the requested amount of proposed take deviates from the calculated take based on observations during the 2020 surveys. Other than in the instances described below, NMFS agrees with Atlantic Shores' request for take and we propose to authorize the same amount of take as described in their request.

As described in the renewal IHA request, large groups of common dolphins commonly approached the HRG survey vessels to bow ride during the 2020 surveys. Despite completing approximately 56.7 percent of the planned survey distance, Atlantic Shores reported using 67.3 percent of total take authorized in the initial IHA for this species. In 2019, the IHA application used seasonal density data to calculate requested take for 544 common dolphins. However, 2020 survey activities resulted in 366 takes

accumulated for this species, which involved 58 common dolphin detection events where the mean pod size reported was 6.79. For the 2021 surveys, Atlantic Shores is requesting 406 common dolphin takes based on an encounter rate similar to that observed in 2020 (58 detection events x 7 animals/group). However, NMFS proposes to authorize the same amount of take of common dolphins as authorized in the initial IHA (544). Recently, NMFS has modified or proposed to modify other HRG IHAs in the same geographic region due to underestimates of take for bowriding dolphins (*e.g.*, 86 FR 13695, March 10, 2021; 85 FR 55415, September 8, 2020). Because of these experiences, we have determined this approach is necessary to ensure take is not exceeded.

In the initial IHA application, Atlantic Shores also adjusted calculated take (per the equation above) to consider group size for Risso's dolphin, Atlantic spotted dolphins, and long-finned pilot whales. As described in Atlantic Shores' interim monitoring report, they did not observe any of these species during the 2020 surveys. Therefore, we have carried over the same amount of take as proposed in the initial IHA. Atlantic Shores is also requesting the same amount of sei whale take as authorized in the previous IHA based on an encounter during 2020 survey operations where a single sei whale surfaced inside the Level B exposure zone resulting in a take.

Finally, during consideration of this renewal request, an error in the application information supporting the harbor porpoise take estimate was identified. Specifically, the density for harbor porpoise was accurate; however, the calculated take for each lease area was incorrectly reported which led to an inaccurate total take amount. The amount of take authorized in the 2020 IHA was 115 when it should have been 847 based on the method used. The correct take estimate for the remaining survey lines covered under the renewal, using that same method, would be 266 takes of harbor porpoise. However, zero harbor porpoises were detected during the 2020 surveys, suggesting that the corrected estimate would likely be an overestimate and the number of takes authorized in the initial IHA is

sufficient, and therefore NMFS proposes to authorize the same number of harbor porpoise take included in the initial IHA (115).

Table 2. Initial IHA Take Authorized and Renewal IHA Proposed Take.

Species	Level B Harassment		Percent of Population ⁵
	Take Authorized Initial IHA	Proposed Take Renewal IHA	
North Atlantic right whale	9	8	1.9
Humpback whale	18	8	< 1
Fin whale	20	9	<1
Sei whale	2	2 ¹	<1
Minke whale	9	5	<1
Sperm whale	3	1	<1
Long-finned pilot whale	6	6 ²	<1
Bottlenose dolphin (W.N. Atlantic Coastal Migratory)	1,102	663	9.9
Bottlenose dolphin (W.N. Atlantic Offshore)	5,113	2408	3.8
Common dolphin	544	544 ³	<1
Atlantic white-sided dolphin	82	42 ⁴	<1
Atlantic spotted dolphin	100	50 ²	<1
Risso's Dolphin	6	6 ²	<1
Harbor porpoise	115	115 ²	<1
Harbor seal	1,404	529	<1
Gray seal	1,404	529	1.9

¹Adjusted from 1 to 2 animals based on 2020 field observations.
²Adjusted from calculated and requested take considering these species were not observed during the 2020 surveys.
³ Atlantic Shores requested fewer takes than proposed here; however, we propose authorizing the same amount of take authorized in the initial IHA to account for the propensity for this species to bowride and travel in large groups.
⁴ Adjusted from calculated take to account for group size.
⁵Population numbers in the initial IHA were generated from the Draft 2020 Stock Assessment Reports and remain valid to calculate percent of population here (NMFS, 2021).

Description of Proposed Mitigation, Monitoring and Reporting Measures

The proposed mitigation, monitoring, and reporting measures included as requirements in this authorization are identical to those included in the **Federal Register** notice announcing the issuance of the initial IHA (85 FR 21198, April 10, 2020), and the discussion of how we reached a least practicable adverse impact determination included in that document remains applicable. All mitigation, monitoring and reporting measures in the initial IHA are carried over to this proposed renewal IHA and summarized here:

- Ramp-up: a ramp-up procedure would be used for geophysical survey equipment capable of adjusting energy levels at the start or re-start of survey activities.
- Protected Species Observers: A minimum of one NMFS-approved Protected Species Observer (PSO) must be on duty and conducting visual observations at all times during daylight hours (*i.e.*, from 30 minutes prior to sunrise through 30 minutes following sunset) and 30 minutes prior to and during nighttime ramp-ups of HRG equipment.
- Exclusion Zones (EZ): Marine mammal EZ would be established around the HRG survey equipment and monitored by PSO during HRG surveys as follows: A 500-m EZ would be required for North Atlantic right whales and a 100-m EZ would be required for all other marine mammals.
- Pre-Operation Clearance Protocols: Prior to initiating HRG survey activities, Atlantic Shores would implement a 30-minute pre-operation clearance period. Ramp-up of the survey equipment would not begin until the relevant EZs have been cleared by the PSOs, as described above. HRG equipment would be initiated at their lowest power output and would be incrementally increased to full power. If any marine mammals are detected within the EZs prior to or during ramp-up, the HRG equipment would be shut down (as described below).
- Shutdown of HRG Equipment: If an HRG source is active and a marine mammal is observed within or entering a relevant EZ (as described above) an immediate shutdown of the HRG survey equipment would be required. Note this shutdown requirement would be waived for certain genera of small delphinids.
- Vessel strike avoidance measures: separation distances for large whales (500 m NAWRD, 100 m other large whales; 50 m other cetaceans and pinnipeds); restricted vessel speeds and operational maneuvers.
- Reporting: Atlantic Shores will submit a marine mammal report within 90 days

following completion of the surveys.

Comments and Responses

As noted previously, NMFS published a notice of a proposed IHA (85 FR 7926, February 12, 2020) and solicited public comments on both our proposal to issue the initial IHA for marine site characterization surveys and on the potential for a renewal IHA, should certain requirements be met.

All public comments were addressed in the notice announcing the issuance of the initial IHA (85 FR 21198; April 10, 2020). Below, we describe how we have addressed, with updated information where appropriate, any comments received that specifically pertain to the Renewal of the 2020 IHA.

The Marine Mammal Commission (the Commission) was concerned that the renewal process is inconsistent with the statutory requirements under section 101(a)(5)(D) of the MMPA. As such, the Commission recommended that NMFS refrain from issuing renewals for any authorization and instead use its abbreviated **Federal Register** notice process.

The notice of the proposed initial IHA expressly notified and invited comment from the public on the possibility that under certain, limited conditions the applicant could seek a renewal IHA for an additional year. The notice described the conditions under which such a renewal request could be considered and expressly sought public comment in the event such a renewal were sought. Further, since issuance of the initial IHA NMFS has modified the renewal process to provide notice through the **Federal Register** and an additional 15-day public comment period at the time the renewal IHA is requested. NMFS also will provide direct notice of the proposed renewal to those who commented on the initial IHA, to provide an opportunity to submit any additional comments. Therefore, the renewal process is consistent with section 101(a)(5)(D) of the

MMPA and NMFS will continue to utilize this effective and efficient process provided the renewal criteria are met.

The Commission was also concerned that NMFS had not explicitly identified that a 1 year renewal IHA was a one-time opportunity in our **Federal Register** notices nor on our website. NMFS has since identified in **Federal Register** notices and on our website that a renewal IHA is one time opportunity.

Preliminary Determinations

The survey activities proposed by Atlantic Shores are identical to (and a subset of) those analyzed in the initial IHA, as are the method of taking and the effects of the action. The mitigation measures and monitoring and reporting requirements as described above are also identical to the initial IHA. The planned number of days of activity will be reduced given the completion of a small portion of the originally planned work.

Therefore, the amount of take proposed is equal to or less than that authorized in the initial IHA. The potential effect of Atlantic Shores' activities remains limited to Level B harassment in the form of behavioral disturbance. In analyzing the effects of the activities in the initial IHA, NMFS determined that Atlantic Shores' activities would have a negligible impact on the affected species or stocks and that the authorized take numbers of each species or stock were small relative to the relevant stocks (*e.g.*, less than one-third of the abundance of all stocks).

NMFS has preliminarily concluded that there is no new information suggesting that our analysis or findings should change from those reached for the initial IHA. Based on the information and analysis contained here and in the referenced documents, NMFS has determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to

the affected stock abundances; (4) Atlantic Shore's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action, and; (5) appropriate monitoring and reporting requirements are included.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the NMFS Greater Atlantic Regional Fisheries Office (GARFO), whenever we propose to authorize take for endangered or threatened species.

The NMFS Office of Protected Resources is proposing to authorize the incidental take of four species of marine mammals which are listed under the ESA: the North Atlantic right, fin, sei, and sperm whale. The Bureau of Ocean Energy Management (BOEM) and U.S. Army Corps of Engineers consulted with NMFS Greater Atlantic Regional Office (GARFO) under section 7 of the ESA on commercial wind lease issuance and site assessment activities on the Atlantic Outer Continental Shelf in Massachusetts, Rhode Island, New York and New Jersey Wind Energy Areas. The resulting Biological Opinion, issued on April 10, 2013, concluded the proposed action may adversely affect but is not likely to jeopardize the continued existence of the four aforementioned species.

On April 13, 2020, GARFO determined that the 2013 Biological Opinion remained valid for issuance of Atlantic Shores' initial IHA and that the proposed MMPA authorization provides no new information about the effects of the action, nor does it change the extent of effects of the action, or any other basis to require reinitiation of the

Opinion. Similarly, on March 3, 2021, GARFO concluded the same for issuance of the Renewal IHA to Atlantic Shores. Therefore, the 2013 Biological Opinion meets the requirements of section 7(a)(2) of the ESA and implementing regulations at 50 CFR 402 for our proposed action to issue an IHA under the MMPA, and no further consultation is required.

The 2013 Biological Opinion and amended ITS can be found at www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable.

Proposed Renewal IHA and Request for Public Comment

As a result of these preliminary determinations, NMFS proposes to issue a renewal IHA to Atlantic Shores for conducting marine site characterization surveys off New York and New Jersey, effective from April 20, 2021 through April 19, 2022, provided the previously described mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed and initial IHA can be found at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. We request comment on our analyses, the proposed Renewal IHA, and any other aspect of this Notice. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

Dated: March 24, 2021.

Donna S. Wieting,

Director, Office of Protected Resources,

National Marine Fisheries Service.